

**MEMORANDUM OF UNDERSTANDING BETWEEN THE WISCONSIN DEPARTMENT  
OF NATURAL RESOURCES AND THE WINNEBAGO COUNTY LAND AND WATER  
CONSERVATION DEPARTMENT  
FOR THE  
ADMINISTRATION AND IMPLEMENTATION OF AGRICULTURAL  
PERFORMANCE STANDARDS AND PROHIBITIONS  
UNDER NR151**

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## Purpose

This memorandum of understanding (MOU) is an addendum to a multi-agency operational agreement that exist between the Winnebago County Land Conservation Committee, WI Department of Natural Resources, WI Department of Agriculture, Trade and Consumer Protection, Winnebago County Extension and USDA Natural Resources Conservation Service (12/08/04).

This MOU has been developed by the Winnebago County Land and Water Conservation Department (LWCD) under the guidance of the Winnebago County Land Conservation Committee (LCC), and by the Wisconsin Department of Natural Resources (DNR) to clarify their respective roles and responsibilities as needed to:

- Implement and enforce agricultural nonpoint pollution performance standards and prohibitions established in ch. NR 151, Wis. Adm. Code.

This MOU defines the commitment of each agency to conduct administrative tasks that have been identified in the standardized program delivery guidance document titled *Implementation Strategy for NR 151 Agricultural Performance Standards and Prohibitions*<sup>1</sup> (hereafter referred to as the Implementation Strategy). This MOU may be amended at any time as agreed to by both parties.

Specifically, this MOU clarifies how the DNR and the LWCD will:

- Incorporate the Implementation Strategy into routine agency operations.
- Systematically evaluate and define the level of agency commitment to the NR 151 and NR 243 workload using a county-sponsored annual needs assessment and interagency work planning process.
- Conduct information and education activities.
- Systematically select and evaluate parcels to determine compliance with standards and prohibitions.
- Prepare compliance reports and notify landowners of compliance status.
- Provide technical assistance and available cost-share funding as needed to allow landowners to meet performance standards and prohibitions.
- Issue notice letters under NR 151.09 and NR 151.095 as appropriate.
- Monitor compliance.
- Conduct enforcement activities.
- Develop annual reports.
- Review the MOU and Implementation Process Annually

<sup>1</sup> This document was prepared jointly by WI Dept. of Natural Resources, WI Dept. of Agriculture, Trade, and Consumer Protection, the WI Land and Water Conservation Association, and the WI Association of Land Conservation Employees (April, 2002). It has been approved by the Wisconsin Land and Water Conservation Board as Appendix E to the *Land and Water Resources Management Plan Guidelines*. The document can be found at <http://dnr.wi.gov/org/water/wm/nps/rules/NR151strategy.htm>.

- A. As a basis for this agreement, the parties agree:**
1. State statutes and associated administrative rules establish the requirement that agricultural performance standards and prohibitions, established in NR151, must be implemented. (ss. 92.07, 92.10, 92.105, 92.14 and 281.16, Wis. Stats., chs. NR 151 and ATCP 50, Wis. Adm. Code.)
  2. The responsibility and authority to administer and implement the agricultural performance standards and prohibitions has been delegated through State statutes and administrative rules to DNR, DATCP, and by reference, to local municipalities, including the County Land Conservation Committees.
  3. DNR is the state agency responsible for administering NR 243, and for implementing NR 151.09, and NR 151.095. Notes in NR 151.09(2) and NR 151.095(2) state the DNR's intent to rely on County Land Conservation Committees to fully implement the performance standards and prohibitions and to develop intergovernmental agreements to guide implementation.
  4. DATCP is the lead state agency responsible for administering staffing grants under ATCP 50.26 for base level conservation, priority watershed activities and performance standards & prohibitions compliance.
  5. DNR has authority under Targeted Runoff Management grants to provide funding for local staffing, but has limited resources.
  6. The Winnebago County Land and Water Conservation Department employs qualified staff with the necessary contracting, planning, and engineering expertise needed to implement the NR151 standards.
  7. Implementation of agricultural nonpoint standards and prohibitions is contingent upon the availability of trained technical staff and public cost share. Without funding and staff support for contracting and technical assistance, few, if any, contracts will be executed, or conservation practices constructed to implement performance standards and prohibitions.
  8. Winnebago County and the DNR share common goals and objectives toward soil and water resources management and nonpoint source pollution control.
  9. Winnebago County and the DNR have an existing operational agreement that encourages interagency cooperation to pursue common resource management objectives.
  10. To optimize use of available State and County staff and program funding, it is in the mutual interest of the County and the DNR to clarify program responsibilities and to make commitments necessary to implement state laws and administrative rules.
  11. Either party may cancel this MOU with 90 days written notice.

**I. Component 1: Planning for Implementation**

**A. The parties agree:**

1. The Implementation Strategy provides a structural framework that can be used to discuss and plan how the parties will cooperate to implement the agricultural performance standards and prohibitions.
2. This MOU and the Winnebago County Land and Water Resource Management Plan (LWRMP) may be used as the means to document procedures for implementing NR 151.
3. Guidance prepared by DNR and incorporated, as an appendix to this MOU (*Working with Landowners to Implement Agricultural Performance Standards & Prohibitions under NR 151*) is helpful for making correspondence "templates" to use with landowners during the implementation and compliance notification process.
4. The agricultural performance standards and prohibitions are designed to achieve water quality standards by limiting nonpoint source water pollution.
5. NR 151.004 contains a process for developing targeted performance standards where implementation of statewide performance standards and prohibitions fails to achieve water quality standards for a specific waterbody.
6. Sections NR151.09, NR 151.095, ATCP 50.04 and ATCP 50.08 require agricultural landowners and operators to meet agricultural nonpoint performance standards and manure management prohibitions. These requirements are contingent upon sufficient cost sharing for existing facilities and practices.

**B. Winnebago County will:**

1. Use this MOU to guide the implementation of agricultural performance standards and prohibitions.
2. Implement select portions of the administrative rules and components of the Implementation Strategy, as defined in this MOU.
3. Focus NR 151 implementation activities on priority sites as identified in the Winnebago County LWRMP.
4. Identify priority areas where DNR funding under the Targeted Runoff Management Program may be used to reduce significant pollutant loading or impacts to waters of the State and generate compliance with the performance standards and prohibitions.

**C. DNR will:**

1. Use this MOU to guide implementation of agricultural performance standards and prohibitions.
2. Implement select portions of the administrative rules and components of the Implementation Strategy, as defined in this MOU.

3. Target its efforts, including education, issuing notification letters under NR 151.09 and NR 15.095, and enforcement, toward:
  - a. Areas identified as priority sites, draining to waters on the federal list of impaired water bodies (303d list), waters not meeting water quality standards or designated uses and source water protection areas. In doing so, the DNR's efforts will be directed toward *achieving and maintaining* compliance for all existing and new practices and facilities.
4. Work jointly with Winnebago County LWCD to set mutual priorities for implementing agricultural performance standards and prohibitions.
5. Provide Winnebago County with guidance needed to fulfill its agreed-upon roles and responsibilities to implement portions of NR 151.
6. Conduct high priority implementation activities as needed to supplement county roles and responsibilities agreed upon in this MOU.
7. Through State Office pursue with DATCP, additional staffing funds for Winnebago County LWCD to support implementation of NR151.
8. Through State Office pursue mechanisms to provide some level of county staff funding for implementing Targeted Runoff Management projects.
9. When appropriate, identify the need for targeted performance standards.

## **II. Component 2: Level of Agencies' Commitment to NR151 Workload**

### **A. The parties agree:**

1. There must be a mutual understanding of each agency's responsibilities and level of commitment in carrying out implementation of agricultural performance standards and prohibitions, including implementation and enforcement activities identified under NR151.09 and NR151.095.
2. The extent of each agency's commitment is dependent upon the availability of public funds and agency priorities and, therefore, may be expected to change through time.

### **B. Winnebago County will:**

1. Sponsor an annual interagency work planning session, following procedures in the interagency operational agreement. Through this process, the LWCD will formally solicit, document, and record the level of DNR and LWCD commitment towards carrying out the NR151 workload, under Components 3-10 of this MOU.

*Note: Through this process, the LWCD will seek to determine the number of full-time staff positions, (FTE), assigned by each agency (County and State), the technical qualifications of each staff position assigned, activities to be conducted by the assigned position, and the financial resources to be committed.*

**C. DNR will:**

1. Assign a DNR designated representative to actively participate in the LWCD's annual interagency work planning session and landowner compliance activities.
2. Use this work planning process, in conjunction with the DNR work planning process, to make staff commitments toward implementation of NR 151 workload for the upcoming year.
3. Work with LWCD staff to identify site specific projects determined to be priorities for onsite farm evaluations, cost-share funding, issuing notification letters under NR 151.09 and NR 151.095, and enforcement action when appropriate.

**III. Component 3: Information and Education Activities**

**A. The parties agree:**

1. That a structured information and educational program is a critical component of an agricultural nonpoint pollution control program.
2. An effective program will:
  - a. Educate landowners about the Wisconsin agricultural performance standards and prohibitions, applicable conservation practices, and cost-share grant opportunities.
  - b. Promote implementation of conservation practices necessary to meet performance standards and prohibitions.
  - c. Inform landowners about procedures and agency roles to be used statewide and locally for ensuring compliance with the performance standards and prohibitions.
  - d. Establish LWCD and DNR expectations for compliance and consequences for non-compliance.
  - e. Define target audiences, educational messages for each target audience, methods and activities to deliver the educational message to each target audience, anticipated unit costs for each activity, a proposed local or statewide budget and implementation schedule.

**B. Winnebago County will:**

1. Provide structured input into the development of a statewide and regional information and education program to be designed by DNR to support and augment NR151 implementation efforts.
2. Within the limits of allocated State funding, implement information and education activities as identified through the LWCD's LWRMP.

**C. DNR will:**

1. Through State Office develop a statewide information and education program, activity schedule and budget to support state and county efforts to implement NR 151.

2. Through State Office, work with University of Wisconsin-Extension and DATCP to identify and develop information and education materials and activities needed on a statewide basis, and to make the materials accessible to Winnebago County for use and dissemination.
3. Provide input into the planning of the LWCD information and education program, and assist the LWCD and the basin educator, with implementation of the I&E program.

**IV. Component 4A: Determine Current Compliance through Records Inventory**

**A. The parties agree:**

Many producers in Winnebago County, working independently or through public agencies, have adopted conservation practices as part of routine operations. Since 1990, a significant public investment has been made through the WI Non-point Source Water Pollution Abatement Program, the WI Soil and Water Resource Management Program, and the Winnebago County Water Quality Improvement Program (WCWQIP) to help producers install best management practices to reduce agricultural non-point source pollution. As a result of this conservation work, there are many producers that fully or partially comply with the agricultural performance standards and prohibitions.

- Sections NR151.09(3)(b) and NR 151.095(4)(b) require existing cropland practices and livestock facilities that achieve compliance with performance standards and prohibitions to remain in compliance regardless of public cost share.
- Sections NR 151.09(3)(d) and NR 151.095(4)(d) require new cropland practices and livestock facilities to comply with performance standards and prohibitions regardless of cost share.

To establish a baseline for program implementation, it is in the public's interest that documentation be made of the location of cropland practices and livestock facilities that were in compliance as of October 1, 2002, and to inform the landowners, in writing, of the compliance determination and the requirements to maintain compliance. To date, there has been no effort to conduct a systematic review of public records to document the location of cropland practices and livestock facilities that were in existence as of the effective date of the rule, to determine their compliance status or to inform producers of their obligations to meet or maintain the performance standards and prohibitions, with or without cost sharing. State and County cost-share agreements, subject to contractual obligations of active operation and maintenance plans on or after October 1, 2002, Farmland Preservation Program records, and Winnebago County Livestock Waste Management Ordinance Reviews and Permits can be used to document the extent of current compliance achieved through previous public investments and other programs.

**B. Winnebago County will:**

1. Conduct the records review and make a preliminary determination as to the location of cropland practices and livestock facilities that were clearly in compliance with all performance standards and prohibitions applicable to the parcel.
2. From the records review, identify the location of parcels and operations that have records that are inconclusive and warrant an on-site evaluation to determine compliance under Component 4B.

3. Document results of the compliance determination on evaluation and compliance status report forms developed by the LWCD.
4. Use the tax parcel as the basic geographic unit for evaluating and reporting compliance. Where a tax parcel contains more than one livestock facility or cropland practice, the evaluation and reporting system will contain information to distinguish between facilities and practices based on whether they are new, existing, in or out of compliance.

*Note: The County will evaluate whole tax parcels, as maintained on the Winnebago County Real Property Tax Listing, to determine the extent of compliance with each agricultural performance standard and prohibition applying to that parcel.*

5. Review DNR WPDES permit applications for consistency with NR151 and to obtain descriptions of a facility's manure storage, animal lots and locations.

**C. DNR will:**

1. Review Winnebago County records evaluation forms and compliance status report forms for consistency with status determination and notification requirements under NR 151.09 and NR 151.095.
2. With regard to large scale livestock operations permitted under chapter NR 243:
  - a. Compile records of existing WPDES permits for Concentrated Animal Feeding Operations (CAFO) and evaluate these records to determine compliance with NR 151 agricultural performance standards and prohibitions.
  - b. Incorporate into WPDES permits standards that equal or exceed the requirements of NR151.
  - c. Follow the compliance strategy and provide the LWCD with copies of inspection sheets and inspection letters sent to the facility.
  - d. Provide the LWCD with copies of portions of the WPDES permit application that describes a facility's manure storage, animal yards, and locations.
  - e. Provide the LWCD with copies of the manure management plan and its amendments that describe field locations, restrictions, manure application rates, and verification that fields meet "T" (Tolerable Soil Loss as determined by RUSLE2, Soil Loss Prediction Model).

*Note: The manure management prohibitions are contained in the permit, nutrient management through the manure management plan requires meeting N&P recommendations of UW Ext., meeting "T" is shown by 590 farm plan or some other approved equivalent, clean water diversions are met with the "zero" discharge up to the 25 year storm.  
Manure storage is met with requirement of NRCS standard and review of plans before construction and required monitoring by operator.*



## **Component 4B: Determine Compliance through On-Site Evaluation**

### **A. The parties agree:**

1. On-site evaluations may be necessary to document current resource conditions and management practices, as a basis for determining compliance.
2. The accuracy of on-site evaluations will be enhanced if formal evaluation procedures and protocol are established, and standardized evaluation forms are adopted.
3. Greater consistency in conducting on-site evaluations can be achieved if a structured training program is established to educate staff about the standards, evaluation procedures, and requirements for program documentation.
4. The protocol and process for responding to public animal waste complaints, registered under NR243, is established and routinely administered through the DNR, with cooperation from LWCD when requested.
5. New or expanding livestock facilities subject to regulations under NR 243 or the Winnebago County Livestock Waste Management Ordinance should be evaluated for compliance with the performance standards and prohibitions. The evaluation should be conducted prior to issuance of the State or Winnebago County permits.

### **B. Winnebago County will:**

1. Within the limits of staff funding allocated by the State, systematically conduct onsite compliance evaluations for agricultural operations based on the following criteria:
  - a. Voluntarily requests on-site evaluations through the Winnebago County Water Quality Improvement Program.
  - b. Seek permits issued through the Winnebago County Livestock Waste Management Ordinance.
  - c. Landowners applying for State or County cost-share funds administered by Winnebago County LWCD.
  - d. Landowners believed to be out of compliance based on the results of record inventory.
  - e. Formal complaints received by Winnebago County LWCD concerning noncompliance of the Performance Standards and Prohibitions.
2. Within the limits of staff funding allocated by the State, conduct and document a minimum of 10 on-site agricultural operation evaluations per year.
3. Consult with DNR concerning non-routine evaluations, including evaluations of livestock facilities that are expanding and require DNR WPDES or county permits.

**C. DNR will:**

1. As part of the County LWCD's annual work planning process, have the opportunity to provide:
  - a. The location of agricultural operations where, if standards are not implemented, there is a high potential for nonpoint discharge, which may result in a significant impact to waters of the state.
  - b. Correspondence to the County requesting that an onsite evaluation be conducted, and a report be generated, to determine and document the extent of current compliance.
2. Provide a structured training framework and training opportunities to educate DNR and LWCD staff about the agricultural performance standards and prohibitions, procedures for making compliance determinations, and policy aspects of program administration.
3. Assist in the identification of environmental models, site review checklists, and other assessment tools used to evaluate compliance. Assist in providing training.
4. Develop and provide standardized example evaluation forms and a companion electronic form/software application.
5. Provide assistance to the LWCD in making status determinations for high priority or potentially controversial situations, such as those that may require notification, leading to enforcement actions or those being handled by the DNR under NR 243.
6. Systematically respond to public complaints registered under NR243, which allege that there is violation of state agricultural performance standards and prohibitions.
7. Consult with Winnebago County LWCD concerning non-routine evaluations, including evaluations of agricultural operations that are expanding and require DNR WPDES or County permits.

**V. Component 5: Report Preparation and Landowner Notification of Compliance Status**

**A. The parties agree:**

1. To be valid, the results of a record review and/or on-site compliance evaluation must be documented and be based upon confirmed facts.
2. A standardized report format will allow for the systematic collection and reporting of evaluation results and will provide consistency through time.
3. A local process, independent of a formal administrative appeal under chapter 227, Wis. Stats., can be used to provide for a structured review of any local decision pertaining to an initial finding of compliance or other decision involving the interpretation of NR 151 or ATCP 50.
4. "Compliance Status Reports" and associated correspondence are public records that should be retained by LWCD.

5. The *Compliance Status Report* is a document that can be used to inform the landowner about the compliance status of their operation, seek confirmation of information used to determine current compliance, and, if necessary, resolve disagreements regarding compliance status. This report provides the baseline information needed to determine what, if any, funding and technical assistance should be allocated to address on-farm concerns.
6. A geographic data base and record keeping system is necessary to provide ready access to compliance reports completed over time.

*Note: The record-keeping system is the basis for a detailed accounting of the compliance history for each parcel evaluated. Information required for each tax parcel includes: location; receiving water; status (new; existing; in compliance; not in compliance) for each performance standard and prohibition applicable to the parcel; cost-share requirements; cost-share availability; notification history; compliance deadline; conservation practice application & certification history; compliance history.*

7. Mapping can be used to show the cumulative location of agricultural operations that have been evaluated, and the associated compliance status of their land and facilities.

**B. Winnebago County will:**

1. Establish a landowner appeal process, administered by the LCC, to address landowner disagreement with the findings of the compliance status report and subsequent requirements of NR151.
2. Prepare a compliance status report to document the results of each record review and on-site evaluation conducted for a livestock facility or cropping practice. The compliance status report will include the following information:
  - a. The current compliance status of individual tax parcels with reference to each of the performance standards and prohibitions.
  - b. Corrective options and rough cost estimates to comply with each of the performance standards and prohibitions for each parcel or not in compliance.
  - c. Status of eligibility (costs eligible) for public cost sharing.
  - d. Grant funding sources and technical assistance available from Federal, State, and local sources, and third party service providers.
  - e. An explanation of conditions that apply if public cost share funds are used.
  - f. The purpose of the report, and the implications of achieving and maintaining compliance.
  - g. Signature lines indicating landowner agreement or disagreement with report findings.
  - h. The process and procedures to discuss evaluation results with county and or state.
  - i. If appropriate, a copy of performance standards and prohibitions and technical design standards.
3. Provide a copy of the compliance status report and review it with each landowner, explaining the content of the report and procedures available to contest the findings. The County will follow the administrative process outlined in the flowchart included in Appendix A. Including preparing, signing and delivering to landowners Letter Types A, B, C, D, E, F, & G from Appendix A.

4. When the landowner does not agree with the facts and findings of the compliance status report, review and reconfirm the facts and findings and provide the landowner with written procedures and a timeframe to pursue reconsideration of local decisions.
  5. When livestock facilities or cropping practices are not in compliance, assess the relative pollution threat associated with the noncompliance and make a determination regarding the allocation of staff and financial resources under Section 6 of this agreement.
  6. Keep and maintain public records, as the custodial authority, following requirements of the Wisconsin Open Records Law.
  7. Develop and maintain a geographically based record keeping system and database containing the location where farm evaluations have been conducted and where compliance status reports have been issued. At a minimum, the database will contain the following information:
    - a. Location of parcel(s) evaluated as included in the compliance status report, recorded by Town, Range, Section and ¼, ¼ section.
    - b. Watershed where parcel is located
    - c. Landowner at the time of notification.
    - d. Date of compliance status report.
    - e. Date compliance status report mailed to landowner.
    - f. End date for landowner request of status report appeal or reconsideration.
    - g. Receipt date of written request for reconsideration of compliance status report submitted by landowner (if submitted).
    - h. Date response letter mailed to landowner.
  8. Develop and maintain a GIS based index map and data base containing:
    - a. The location of all tax parcels where compliance reports have been issued.
    - b. The locations where letters (All Letter Types) have been sent.
    - c. The date of the last revision.
    - d. The compliance status of the parcel.
  9. Upon completion of the process, record the compliance status of each livestock facility and cropping practice on the GIS database. The public documents to be formally recorded will be restricted to the following:
    - a. Cost-share agreements requiring an O & M (Construction or Bonded Projects)
    - b. Letters of compliance issued to document that all standards and prohibitions specified under NR151 are met (Status Letter B).
    - c. Letters of compliance issued to document that select standards and prohibitions specified on a cost-share or stipulation agreement are met (Status Letter E).
- C. DNR will:**
1. Have their designated representative co-sign landowner contact letters in cases where the DNR concurs with the County's findings.
  2. Provide support to Winnebago County LWCD in explaining compliance determinations to landowners that DNR assisted in developing.

**VI. Component 6A: Secure Funding and Technical Assistance**

**A. The parties agree:**

1. Previous commitments for cost-share funding have been made through cost-share agreements signed under the Arrowhead, Fond du Lac, Pine/Willow Priority Watershed Projects, Soil and Water Resources Management grants and the Winnebago County Water Quality Improvement Program (WCWQIP).
2. Section 281.16(3), Wis. Stats., and sections NR151.09(3)(c), and NR151.095(4)(d) prohibit the State or municipalities from requiring that “existing” practices and facilities , which were not in compliance with the agricultural performance standards and prohibitions on the effective date of the rule, to come into compliance through State regulation or local ordinance unless public cost share funds are provided for eligible costs.
3. NR151.09(3) and NR151.095(4) identify compliance requirements for owners and operators of cropland practices and livestock facilities based on whether the practices and facilities determined to be “existing” or “new”, and whether cost sharing is required and made available to the landowner or operator.
4. NR151 defines cost share availability requirements for funding administered by DNR under 281.65, Stats. ATCP 50 defines cost-share availability from any other source. These requirements must be clearly understood to ensure that DNR and LWCD staff make proper determinations of cost-share availability.
5. Cost-share funds to pursue compliance are now available from a combination of public and private non-profit grant sources, including: the Fond du Lac and Pine / Willow Watershed Projects, the DATCP Soil and Water Resource Management Program (SWRM), the DNR Targeted Runoff Management Program (TRM), USDA cost-sharing programs, the Winnebago County Water Quality Improvement Program and nonprofit organizations.
6. Developing cost-share funding proposals and grant contracts from single or multiple grant sources, requires significant knowledge of multiple grant programs, administrative rules, and contracting requirements.

**B. Winnebago County will:**

1. Through its fiscal policy and grants management strategy, reserve a portion of available State and County cost-share funds for landowners that voluntarily participate in a farm evaluation and certification through the WCWQIP and/or based on their compliance status report and are deemed eligible for cost-sharing to achieve compliance.
2. Within the limits of staff funding allocated by the State, apply for additional funds available through the DNR TRM grant program and pursue new sources of local, state and federal funds to provide eligible landowners cost-sharing to achieve compliance with NR 151.

3. Convey to the responsible USDA agencies (NRCS and FSA) the County's preference to prioritize and allocate a portion of Federal cost share funds to applicants that participate in voluntarily farm evaluation and certification, that do not as yet, fully meet the State's agricultural performance standards and prohibitions.
4. Evaluate the availability and allotment of County staff based on staff funding allocated by the State and/or direct reimbursement provided by DNR and/or DATCP to install conservation practices and implement the agricultural performance standards and prohibitions.

**C. DNR will:**

1. Through State Office assist Winnebago County LWCD in determining what constitutes an eligible and adequate offer of cost sharing when using specific DNR funding sources.
2. Through State Office establish procedures with DATCP to confirm the availability of cost-share funding and pursue new sources of funds to provide eligible landowners cost-sharing to achieve compliance with NR 151.

**Component 6B: Option to Issue Non-Voluntary NR151 Notice of Cost-Share**

**A. Parties Agree:**

1. In nearly all circumstances, landowners are willing and able to implement conservation practices voluntarily to comply with the performance standards and prohibitions.
2. Chapter NR 151.09 and NR 151.095 set forth notification requirements that must be met before DNR can initiate enforcement action under Ch. 281, Stats., for non-compliance with performance standards and prohibitions. Including notifying the landowner that cost sharing must be offered, or in cases when cost share is not required, the time period for achieving compliance.
3. Notification and cost-share availability requirements vary depending upon the legal authority and the funding source used to enforce the standards. These requirements are documented in Appendix A.
4. Developing and issuing notices of cost sharing under the non-voluntary NR151 option is the joint responsibility of Winnebago County LWCD and DNR.

**B. Winnebago County will:**

1. Within the limits of staff funding allocated by the State, and with input from DNR regional staff, prepare draft landowner notifications under NR 151.09 (5-6) and NR 151.095 (6-7) using DNR templates (See Letter Types C and D, Appendix A).
2. Provide draft notices to the DNR designated representative for completion and signature.

**C. DNR will:**

1. Review all landowner contact letters and revise as required.
2. Sign and issue notices found in Appendix A (contact letters) to landowners under NR 151.09 and NR 151.095.

**VII. Component 7. Administer Funding and Technical Assistance/Re-evaluate Parcel**

**A. The parties agree:**

1. If public funds are offered to install conservation practices, through either the voluntary or non-voluntary option, a cost share agreement must be developed and properly administered.
2. Professional staff who have a working knowledge of administrative rules, contracting procedures, agronomy and/or agricultural engineering have historically developed cost-share agreements.
3. The “farm conservation planning process” has historically been used to:
  - a. Compile physical information regarding the agricultural land production potential.
  - b. Document current management practices being used for crop and livestock production.
  - c. Inform and educate landowners about the conservation practices available to meet conservation objectives.
  - d. Document the location and scheduled implementation of conservation practices as a basis for cost share contract development.
4. A site evaluation and engineering process has historically been used to:
  - a. Inventory and evaluate sources of agricultural runoff and nonpoint pollution.
  - b. Identify management options and best management practices to control runoff.
  - c. Prepare cost estimates of the available management options as a basis for decision making and contracting.
  - d. Design the selected management system and conduct the appropriate bidding process.
  - e. Layout, supervise and verify the construction of the selected runoff management system.
5. The successful completion of the conservation planning, contracting, and engineering process requires a broad range of skills and services in the fields of agronomy, engineering, and public administration.
6. The DNR, DATCP, and County have, through the Wisconsin Nonpoint Source Water Pollution Abatement Program and the Soil and Water Resource Management Program, recruited, supported, and maintained a technical delivery staff with proven expertise in administering a nonpoint pollution abatement program for the purpose of meeting agricultural performance standards and prohibitions.

**B. The County will:**

1. Within the limits of staff funding allocated by the State, establish and administer a budget and accounting system to receive and disperse state funds administered by the County LWCD on behalf of the State.
2. Within the limits of staff funding allocated by the State, employ or contract professional staff for the purpose of developing and administrating cost share contracts on behalf of county, state and federal agencies.

When administering state or local cost-share agreements, the agreement will stipulate (or will be accompanied by a separate stipulation agreement) that the affected cropland practices and livestock facilities will maintain or be brought into compliance with applicable performance standards and prohibitions, as enumerated in the compliance status report. These cost-share documents will be recorded and maintained as part of the geographic database and record keeping system described in Section V.B.7.

3. Within the limits of staff funding allocated by the State, employ or contract a CCA certified agronomist or NRCS certified conservation planner, to provide conservation planning services to landowners, and review conservation and/or nutrient management plans prepared by private service providers or other agency staff.
4. In circumstances where conservation planning or engineering services are provided to the landowner as a reimbursable expense under the DNR TRM Program or USDA cost share programs, account for conservation planning and engineering expenses and bill the landowner at a standardized hourly rate upon completion of the contracted practice.
5. Upon completion of conservation practices implemented through the cost share agreement, conduct an onsite evaluation of the operation to document compliance with the performance standards and prohibitions.
6. Provide to DNR a draft letter of satisfaction to be issued to the landowner and record this compliance following procedures listed in the Policy Statement for Implementing NR151 and ATCP 50.
7. Within the limits of staff funding allocated by the State, conduct ongoing compliance monitoring through Operation and Management (O&M Plan) support.

**C. The DNR will:**

1. Through State Office, provide direct reimbursement to the County for engineering services performed to design and install best management practices through the TRM grant program.
2. Through State Office, with DATCP, seek to secure sources of funding to reimburse the County for its administrative and technical services.
3. When in agreement, sign satisfaction letters being sent to landowners.



## **VIII. Component 8: Enforcement**

### **A. The parties agree:**

1. DNR and Winnebago County LWCD will use voluntary means, to the extent practical, to achieve compliance with performance standards and prohibitions, but may use enforcement when necessary to meet requirements of ch. 281, Stats., and NR151.
2. To be effective, the public and affected landowners must perceive enforcement as a necessary option, pursued jointly by the parties, after voluntary measures to achieve compliance have failed.
3. Winnebago County LWCD has authority to enforce the performance standards and prohibitions under s. 281.16, Stats., but has chosen not to do so at this time.
4. DNR has authority to enforce performance standards and prohibitions through a number of statutory options. These include, but are not limited to:
  - a. Referral by DNR to the Wisconsin Department of Justice to seek relief under s. 281.98, Wis. Stats.,
  - b. Use of enforcement procedures under NR 243 and s. 283.89, Stats., to obtain compliance with performance standards and prohibitions or to resolve a water quality problem.
  - c. Use of other state laws, including citation authority under s. 29.601, Wis. Stats.
5. To be effective, enforcement procedures must be well coordinated between DNR and Winnebago County LWCD, and must be supported by both parties.
6. NR 151.09 and NR 151.095 establish the procedures that must be followed as pre-requisites to enforcement when DNR funds are used or when DNR pursues enforcement under s. 281.98, Wis. Stats.
7. The formal enforcement procedures are recognized to begin with the issuance of a Notice of Violation. Grounds for issuing a Notice of Violation letter is non-compliance by the landowner or operator with the notice issued under NR 151.09(5), NR 151.09(6), NR 151.095(6), or NR 151.095(7) and Component 6 of this agreement.

### **B. Winnebago County Will:**

1. Support DNR's lead role in enforcement.
2. Identify cases where landowners do not follow the requirements of their noncompliance notices and provide this information to the DNR.
3. Participate in DNR enforcement conferences.
4. Provide background information to DNR needed for WPDES permits or to develop referral packages to the Wisconsin Department of Justice.

5. Provide testimony, documents or other technical support for enforcement cases.
6. In circumstances where the County LWCD has issued permits or is pursuing legal actions under other authority, ensure that appropriate information concerning those permits or enforcement activity is transmitted to DNR.

**C. DNR will:**

1. Take the lead role in initiating enforcement action, including issuing notices of violation.
2. Ensure that appropriate information concerning enforcement activity by the DNR is transmitted to the County LWCD.
3. Schedule and conduct enforcement conferences when appropriate.
4. If a point source discharge exists, issue a WPDES permit or take enforcement action under NR 243 and ch. 283, Stats., consistent with regional and statewide permitting priorities.
5. Determine compliance with permits, consistent with regional and statewide compliance activities.
6. Prepare referral packages to Attorney General's Office if non-compliance continues and referral is approved by the DNR Secretary's Office.

**IX. Component 9. Ongoing Compliance Monitoring**

**A. The parties agree:**

1. NR151.09(3)(b) and NR151.095(4)(b) require that existing cropland practices and livestock facilities, which are in compliance on or after October 1, 2002, remain in compliance without the offer of cost share.
2. Ongoing agricultural operations are dynamic in nature and continually change in response to market forces, changes in technology, and changes in land ownership.
3. Periodic evaluations are of direct value to current owners and operators, as they make routine business decisions which affect their agricultural operation, including those related to capital investments, land rental, and land sales.
4. Routine compliance monitoring is of direct value to the general public as a way to verify that compliance is maintained.

**B. Winnebago County will:**

1. For those operations that have received a letter indicating compliance, implement a system of routine compliance monitoring. The extent of monitoring will be directly proportional to the funding allocated by the State specifically to support this effort.

2. Under the monitoring system:
  - a. Conduct an annual reporting and self-certification program for operations that have an active State cost share contract subject to a 10 year Operation and Maintenance Plan.
  - b. Conduct a biennial educational mailing for operations that are in compliance and no longer subject to provisions of an active operation and maintenance plan.
3. Respond to public complaints following the protocol for compliant response, procedures for site evaluation, and determinations as established in Sections 4 and 5 of this agreement.

**C. DNR will:**

1. Assist the County LWCD with the creation and implementation of monitoring programs and systems.
2. Through State Office pursue with DATCP funds to cover the cost of monitoring.

**X. Component 10: Annual Reporting**

**A. The parties agree:**

1. Annual reports can be used to track progress toward implementing the NR151 agricultural performance standards and prohibitions.
2. The information contained in an annual report must be systematically collected and readily accessible by the LWCD from the record-keeping system. Information will be conveyed on reporting forms provided by DNR.
3. DNR will work with DATCP to collect information for an annual statewide report, documenting the status of program implementation.
4. To assure the appropriate information is gathered, each State agency must define in advance, the information they intend to request of the County, to sufficiently monitor statewide program implementation.

**B. Winnebago County will:**

1. Upon request, report to the DNR the information that summarizes the general compliance status of livestock facilities and cropland in the County. Information will be conveyed on reporting forms provided by DNR.
2. If possible the report will be augmented by a map showing the cumulative location of cropland parcels and livestock operations that have been evaluated, and the associated compliance status of these parcels and operations.

**C. DNR will:**

1. Through State Office develop an annual reporting form by which Counties will report the general compliance status of livestock facilities and cropland in the County.


*Note: Information in the annual report is anticipated to include the following, summarized by county, watershed and performance standard/prohibition: total number of fields and facilities (estimate); portion of total that has been assessed (estimate); number of fields and facilities assessed (actual); number of assessed fields and facilities that are in compliance (actual); portion of assessed fields and facilities that are in compliance (actual).*

2. Through State Office provide the form electronically to the County at least 2 months prior to the completion date.

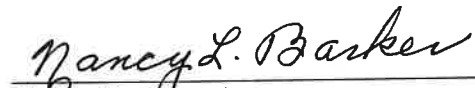
3. Through State Office compile the data from all Counties into a statewide report to be presented to the Land and Water Conservation Board, DNR Board, Agricultural Board, Wisconsin Legislature, and other interested parties.

*Note: DNR intends to develop this report jointly with DATCP.*


**Signatures:**

  
\_\_\_\_\_  
Thomas Davies, Director  
Winnebago County Land and Water Conservation Department

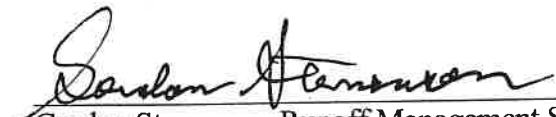
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\_\_\_\_\_  
Nancy Barker, Chairperson  
Winnebago County Land Conservation Committee

12-21-06  
date

  
\_\_\_\_\_  
Robin McLennan, Watershed Basin Supervisor  
Wisconsin Department of Natural Resources, Northeast Region

1/11/07  
date

  
\_\_\_\_\_  
Gordon Stevenson, Runoff Management Section Chief  
Wisconsin Department of Natural Resources

2/01/07  
date